

LOWER PAXTON TOWNSHIP ZONING HEARING BOARD

Meeting of November 1, 2012

Members Present

David Dowling
Sara Jane Cate
Greg Sirb
Jeffrey Staub
Watson Fisher

Also in Attendance

James Turner
Dianne Moran
Attorney Steve Stine
Matthew Miller

Docket 1321

Applicant: Anthony and Jenny Fedullo

Address: 6613 Richmond Court
Harrisburg, PA 17111

Property: 6613 Richmond Court
Harrisburg, PA 17111

Interpretation: Article 307.C – Accessory Structures and Uses. She noted that Accessory structures and uses shall meet the minimum yard setbacks provided for in Section 307. A, unless otherwise provided in this Ordinance. She noted that the applicant has a basketball facility (pole and backboard) located within the street right-of-way along the property's frontage. The basketball structure is not permitted within the road right-of-way by the Township's Zoning Ordinance.

Grounds: Article 307.C – Accessory Structures and Uses

Fees Paid: September 11, 212

Property Posted: October 23, 2012

Advertisement: Appeared in The Paxton Herald on October 17 and 24, 2012.

The hearing began at 7 p.m.

Mr. Sirb swore in Anthony and Jenny Fedullo, 6613 Richmond Court, Harrisburg, Pennsylvania, 17111.

Mr. Sirb swore in Ms. Dianne Moran.

Ms. Dianne Moran advised that the appropriate fees were paid on September 11, 2012. The proper advertisements appeared in The Paxton Herald on October 17 and 24, 2012. The hearing notices were posed on October 23, 2012

Ms. Moran noted that this hearing applies to Article 307.C – Accessory Structures and Uses. She noted that Accessory structures and uses shall meet the minimum yard setbacks provided for in Section 307. A, unless otherwise provided in this Ordinance. She noted that the applicant has a basketball facility (pole and backboard) located within the street right-of-way along the property's frontage. The basketball structure is not permitted within the road right-of-way by the Township's Zoning Ordinance.

Mr. Sirb noted that it is customary for the Board to make the applicant for variance an exhibit and he questioned if the applicant had any problems with that. Mr. Fedullo answered no.

Mr. Sirb directed the applicant to explain why they should be granted the variance.

Ms. Fedullo introduced herself, her husband and their two children. She noted that she and her husband are longtime residents of the Township as she grew up at 6010 Cherryhill Road and her husband lived on Barley Corn Square. She noted after college, they move to Stoney Brook Development for ten years and now live at their current address in Stradford Woods.

Ms. Fedullo requested that an exception be made to be able to keep their basketball hoop (hoop) and that the Board considering the following items. She noted that there is inconsistent enforcement of the ordinance. She noted within a five-mile radius of her residence, she documented over 100 residences in violation of the ordinance. She noted that it is made up of a mix of permanent hoops installed in concrete and temporary hoops. She noted that there is no distinction for the ordinance.

Mr. Sirb questioned if it made a difference if it was a permanent structure or a temporary structure. Ms. Moran noted that all hoops are not permitted to be in the right-of-way, noting that a portable hoop could be moved out of the right-of-way.

Ms. Fedullo noted that she found 56 permanents and 73 temporary hoops driving through a couple of streets. She noted that 6553 New Providence Drive has lines painted on road to provide for a full court, and it has been there for many years. She noted that the Heatherfield Housing area, their club house has one in the parking lot, and Holy Name of Jesus has two permanent ones in their parking lot.

Ms. Fedullo noted that she would like to discuss precedence, noting that another residence within the neighborhood, 312 Kent Drive, Donna and Ed Wilson received a letter from the Township to remove their hoop and subsequently contacted Channel 27 News who came to their home, did a story, and they did not hear from the Township again.

Ms. Fedullo noted that the third consideration is hardship. She noted that she has no other option. She explained that her husband was on the Central Dauphin High School basketball

team and likes to place basketball. She noted that her son likes to play basketball and the back of their home drops off to a creek and there is no option to use the back. She noted when they purchased the lot, they thought it would be flat, but it didn't turn out that way and they have no other option.

Ms. Fedullo noted that the fourth item is the location of the basketball hoop noting that it is located at the end of the cul-de-sac and does not interfere with Township equipment or right-of-way. She noted that she has lived in her home for a winter season and a small pickup plows their cul-de-sac to push the snow away from their house. She presented some pictures to the Board on this issue. Mr. Fedullo noted that the picture is a view from the end of the street as you can see the hoop and his house. He noted that the cul-de-sac is very big. Ms. Cate questioned if Mr. Fedullo has considered putting the hoop in the driveway. Ms. Fedullo answered that it can't do be done as the driveway has a slope. Mr. Turner noted that he would mark the picture as Applicant's Exhibit 1.

Ms. Fedullo noted that the fifth consideration is that the neighbors on Richmond Court do not object to the hoop, noting that she has a petition signed by everyone on her street with no objections. Mr. Fedullo presented the petition to the Zoning Hearing Board.

Ms. Fedullo noted that children will play in the cul-de-sac regardless if there is a basketball hoop or not. She noted that they play 4-Square, they ride their bikes, noting that is where the kids will play. She noted that it is safer for the kids to play in the street then to play in the driveway. She noted that the hoop may be up on the driveway, noting that it is still too close to the road, however they are out there playing... She explained that when she was driving on Deaven Road, the kids were playing on a driveway and she couldn't see them. She noted that a basketball bounced down into the middle of the road and she slammed on her brakes but she did not see the children playing in the driveway. She noted in our case, the children playing at her hoop are in view when you are driving down our road with no issues.

Ms. Fedullo noted that the safety of her children would allow her to supervise the children when they are playing as they do as they do not need to go anywhere else to play. She noted that the children are getting exercise noting that there is an issue with childhood obesity. She noted that she wants to allow areas for her children to play.

Ms. Fedullo noted that the final reason is the sense of community, bringing the children together and allowing them to play in a non-destructive manner.

Ms. Fedullo noted that is the end of her testimony.

Mr. Sirb noted that the Fedullo's received a letter on August 9, 2012 and they also got a letter on June 12th. Ms. Moran answered that they did get both letters on those dates. Mr. Sirb questioned if the hoop is cemented in. Mr. Fedullo answered that it was. Mr. Sirb questioned when he cemented the hoop. Mr. Fedullo answered that it was Memorial Day weekend of this year.

Mr. Sirb questioned if the third letter, dated January 27, 2010 was a form letter that went out. Ms. Moran answered that it was. Mr. Sirb questioned Mr. Fedullo if he received that letter. Mr. Fedullo answered that he did not recall.

Mr. Sirb noted if the basketball hoop is in the right-of-way, a 25-foot encroachment, the danger is what. Attorney Steve Stine explained that the Township does not want to allow obstructions within the right-of-way. He noted that the Township must allow a mailbox and temporary political signs but other things are not overtly permitted by the Township. He noted that it is a potential liability issue for the Township but also for the person who puts it in the right-of-way. He noted that Mr. Miller could testify to the issues from the Public Works Department for maintenance for roads when there are obstructions in the right-of-way.

Mr. Sirb requested Mr. Miller to clarify that.

Mr. Dowling questioned if there is any authority, case law or other item that defines a pole with a basketball hoop as an accessory structure. Mr. Stine noted that the zoning ordinance defines it as an accessory structure by name and it can be found in Section 202.2-1 on page 2-10. Mr. Dowling noted that he was looking at the definition page on 2-1 for accessory structure. Mr. Dowling noted that it is not in the definition of accessory structure, rather in the definition of residential accessory structures.

Mr. Stine noted that the picture provided by the applicants' show the basketball hoop and behind it is a fire hydrant, and that is approximately where the Township right-of-way is located. Mr. Turner noted for the sake of the record Mr. Stine is referring to applicant's Exhibit 1, and for the sake of the record the previously submitted petition will be labeled applicant's Exhibit 2.

Mr. Sirb questioned if the 25 foot right-of-way is about where the fire hydrant is. Mr. Stine answered that he did not know if it was 25 feet, but typically they are located at the edge of the right-of-way. He noted to request a variance to put a hoop within the Township's right-of-way is kind of like requesting a variance to put an accessory structure in the neighbor's property without the property owner's permission. He noted that they may own the underlying fee; he noted that he did not know if it was fee simple dedication to the Township, but the Township has the surface rights to use that property and maintain it as a public right-of-way.

Mr. Sirb swore in Matthew Miller, Engineering Field Technician for Lower Paxton Township.

Mr. Sirb requested Mr. Miller to discuss the dangers for having a hoop in the right-of-way. Mr. Miller noted that there are a few different concerns as Mr. Stine had noted. He noted that it creates a playing atmosphere for the children within the street and Mrs. Fedullo's point is well noted. He noted that there is a lot of levity of getting children outside to play, but he did not know if the street is the place to do that sort of activity. He noted that the Public Works Department does not allow anything to overhang the face of the curb; even mail boxes are to have the face of the mailbox behind the face of the curb. He noted that it is the Township's policy to plow curb to curb, or in a non-curbed area, from edge to edge of the road while trying

to stay off the grass. He noted that anything that goes over the face of the curb, i.e., a hoop will interfere with the truck and possibly even hit the truck as the operator is driving down the roadway. He noted that they can be difficult to see depending on the snow conditions, as the operator is generally not looking for a hoop because the operator is assuming that nothing should be in their way to focus on what they are doing. He questioned if any member of the Board has driven a plow truck during a snow storm at night, noting that it is a very tedious and tiring operation. He noted that you try to do it in an efficient manner without causing any destruction. He noted that basketball hoops located at the end of a cul-de-sac while it may be recently installed and in good shape, in five to eight years, as moisture accumulates around the base of the pole, if it starts to corrode and snow is pushed in that area, it can knock it over as snow is extremely heavy. He noted that cul-de-sacs are very difficult to plow for various reasons; one is that you can't push the snow in front of anyone's driveway or mailbox so we do our best to minimize the impacts on the residents of the cul-de-sac. He noted because it is generally 50 to 60 feet in diameter, there is much more snow to plow versus a normal residential 26 or 28 foot wide street. He noted that staff has to find a place to put all that snow and as it is pushed tighter and tighter against the pole, could break a pole or damage it. He noted that the resident could come back to the municipality and say that private property was damaged. He noted that we want to avoid that situation as well.

Mr. Dowling questioned if there is a designated playground in this development. Ms. Moran answered no. Mr. Dowling questioned why there is none.

Mr. Dowling questioned the Fedullo's on the busiest day, how many children play basketball in your neighborhood. Mr. Fedullo answered that it might be five or six. He noted that there are three houses in the cul-de-sac, with one neighbor who has a small child and on his street there are only eight houses and probably half have children of a younger age.

Mr. Dowling questioned if the Board granted the application and the Township damages your hoop accidentally while plowing snow you would assume that is your problem. Mr. Fedullo answered absolutely, he would sign something to state something to that effect.

Mr. Dowling questioned if time passes and the poles rusts or corrodes and poses a danger you would replace it remove it. Mr. Fedullo answered absolutely, at the Township's request, for sure. He noted if it becomes a danger... Mrs. Fedullo noted for our children it would be a danger. Mr. Fedullo noted that we have lived there for one year; the truck did not come around the cul-de-sac and the only plow truck that he saw were pick up trucks with plows on them. He noted that it was not the big trucks. He admitted that we did not have a lot of snow this year but that is what he saw and that is why he felt it would be a good place to put the hoop. Ms. Fedullo noted that it is located back and does not overhang the curb.

Mr. Dowling noted when he looked at this hoop and location he could not help but think of more better place to put it where it would be less of a problem for the Township than where it is placed. He noted that there are three homes there, correct Ms. Moran. Mr. Moran answered yes. Mr. Dowling noted if no one goes in the cul-de-sac unless they live there or visit the homes or are lost and are turning around, and it seems to him that, and he understands what he believes

to be the Township's concern, it is not so much this backboard, it is the precedent that it would set by allowing this to go on and others that are not installed like this one. He noted that we are to look at this application on this location at this time in this cul-de-sac. He noted that it seems that the Township should be doing more to get kids out to exercise and do these things than telling people to take these structures down. He noted that he did not know who did the survey for all hoops. Mr. Fedullo noted that he drove around in some of the local neighborhoods.

Mr. Dowling noted that there have been basketball hoops in the Township forever, why have we taken this stance for this opportunity for this issue now. Mr. Stine answered that the Township received a complaint and it has to investigate it and act accordingly. He noted that you have to remember that the Township never consents to these things being in the right-of-way; they may exist in certain places, but the Township never consents. He noted, in order to get a variance, they are not getting a variance for their own property, they are trying to get a variance for Township property and the Township will not consent to it. Mr. Dowling noted that is why we are having the hearing. Mr. Stine noted that is not true, his point is, in order to apply for a variance; you have to have the consent of anyone who has a property interest in it. He noted that the Township has a property interest in it and it is not consenting to it.

Mr. Sirb noted that is an interesting point.

Mr. Dowling noted that it is their property. Mr. Stine noted that they have the underlying fee interest perhaps. He noted that he did not know if this was dedicated in fee simple or as a right-of-way, but the Township has a property interest and if they are requesting a variance they must have everyone sign off who has a property interest in the area for which the variance is being requested.

Mr. Miller noted that depending upon the location, often utilities occupy outside of the roadway and they may have various easements or agreements to have their facilities placed there. He noted that without Township permission or knowledge of things we have no idea if homeowners do "One Calls" and we have no idea if they go to a local rental store, rent an auger on a Saturday afternoon to install a pole, potentially drilling through various utilities that may be located behind the curb. Mr. Dowling noted wouldn't that be their problem. Mr. Fedullo noted that he had the utility companies come out to draw the lines for their services. Mr. Dowling noted that these are all legitimate issues but ultimately if there is a problem for safety it is the homeowner's responsibility. He noted if they knock out their cable or their neighbor's cable it is their problem.

Mr. Miller noted that there are all kinds of things that could happen and that is why the "One Call" exists noting that anyone excavating must provide three days notice. He noted there is a reason that is in place as accidents have happened and they sound like they have been responsible folks and noted that if the backboard becomes a hazard they would remove it or replace it. He noted that you have one case in front of you dealing with one piece of the puzzle but for us many different people maintain their properties in many different ways and because someone today may say they will agree to do something, if in four or five years they move, something else happens, and the next property owner would inherit something that they didn't

want, especially with a permanent concrete installation. Mr. Fedullo noted that he would agree to remove it if something like that happened.

Mr. Dowling noted that there is a legitimate concern from the Township but his function is to look at this application and the facts for this house and the owners' facts.

Ms. Cate questioned since the Township has not agreed to their request for a variance that it shouldn't be requested. Mr. Stine answered that he did not think that they have the authority to request one on their own because it is in the Township's right-of-way. Mr. Sirb noted that the point is well taken and he questioned if we have had issues like this before the Board previously.

Mr. Stine noted if the Board granted the variance, the Township can still require the Fedullo to remove the hoop as we own the property and don't allow people to put obstructions in our right-of-way. Mr. Sirb questioned that the Township would enforce that by saying what, that it is a hazard. Mr. Stine noted that we would not have to say that it is a hazard. He noted at the minimum, the Township has all the rights to use that only for Township purposes. Mr. Dowling questioned how the Township uses it. Mr. Stine noted that we have the right to use it, we are not using it at this time for the road itself, could we widen the road, sure, we could widen it if we wanted to. He noted that a sidewalk could be put in, sure we could do that too. He noted when the streets are dedicated, they are not dedicated for basketball hoops; they are dedicated for Township facilities and utilities.

Mr. Turner noted that given the age of the development it would be his guess that the Fedullo's don't own the ground where the pole is located and the property line is equal to the fire hydrant. He noted that it would be very unusual in a more recent development for the property line to extend into the street. Mr. Stine agreed.

Mr. Miller noted as a bit of background and perhaps Mr. Staub would be familiar, American Association of State Highway and Transportation Officials (AASHTO) provide engineering guidelines nationwide and they have plenty of details about objects in the right-of-way. He noted that there are many video and studies have been done, a lot of history and time and engineering that has gone into what happens when an object hits a pole or any object in the right-of-way. He noted that not everything can be removed from a right-of-way such as utilities poles and trees that exist in that location. He noted that all poles must be on a break away device as the typical street sign must be mounted on a break away pole to break off upon impact. He noted for a mailbox, if a vehicle takes out the pole, the mailbox can go right through the windshield of the car hitting the driver and passenger. He noted that a fixed object has a tendency instead of breaking away and moving out of the way, a pole has a tendency to bend straight backwards, sometimes coming into the passenger compartment as it was not designed to break away and move out of harms way and absorb some of the accident impact. He noted that it has a tendency to become a V around the car and smash back down. He noted that it is a curbed area, but there is a lot of precedent and studies done that permanently affixed objects within a right-of-way are dangerous. He noted that it is at the end of a cul-de-sac, and someone could drive down there, not see the curb, and bounce over the curb, in general there is a lot of reasons that don't make it good. He noted that there are valid reasons for having

basketball hoops and getting folks out to play but we don't find it a valid reason to play within our right-of-way.

Mr. Sirb questioned if the pole could be a portable one. Mr. Sirb noted that he loves to play basketball and he is lucky to live next door to a playground, playing everyday. Mr. Fedullo answered that the portable ones deteriorate much quicker than the permanent one. Mrs. Fedullo noted that they look worse than the permanent ones. Mr. Fedullo noted that they put rusts stains on the road and weeds grown out of them. Mr. Sirb noted that he understands the issue of not placing a hoop on a sloped driveway, but he noted that the hoops that he has had has wheels and he can wheel it out and put it at the end of the driveway and then roll it back into the garage. He noted that it doesn't weight all that much. Mr. Fedullo noted if only the kids are playing with it, they will not be able to wheel it back up the driveway every time they want to play with it. He noted that he understands the Township's position and if he felt that it was harmful to his children or anyone in the neighborhood or Township he wouldn't put it there. He noted that he would not put anyone in harm's way, asking for the Township sensibility here in that it is just once instance and it is in a safer location than many of the facilities that are up in the Township now. He questioned why they were being singled out for this as there are more than 130 examples of hoops that he found and that does not cover the entire Township. Mr. Sirb noted that the reason you were singled out is that the Township received a complaint. Mr. Fedullo noted that it does not seem fair that we have to take our hoop down; then everyone else should have to take theirs down. Mr. Sirb answered that he understands.

Mr. Staub noted that within the last number of years the Township, particularly in the new subdivisions, have required for dedicated streets that they be dedicated fee simple. Mr. Stine noted that was correct. Mr. Staub noted that Stratford Woods in a newer subdivision and this may qualify. Mr. Stine noted that the fee simple dedication has been around since he started with the Township back in 1988.

Mr. Sirb swore in Richard Wagner. Mr. Wager explained that he lives at 6611 Richmond Court, a neighbor to the Fedullo's.

Mr. Sirb questioned Mr. Wagner if he signed the petition. Mr. Wagner answered that he did.

Mr. Wagner noted by profession that he is a practicing attorney and also a municipal solicitor, not for this municipality but for many other ones. He noted that sensitive to what ordinances are designed to provide, they are designed to regulate and to provide circumstances for safety. He noted in looking at this situation he whole hearty support his neighbors for a number of reasons. He noted that number one it is on a cul-de-sac and the pole is in their yard, not on the cart way. He noted that the suggestion of damage for plowing is a sensitive issue and he recognizes that. He noted to hit the pole you would have to hit the curb.

Mr. Wagner noted that the second item is, in the years that he has lived there, plowing has been done by a pickup truck or a larger body truck but not the big snow plows that are used when it snows. He noted that we have a wonderful crew in the Township that plows are street,

but when we inquire when our cul-de-sac will be plowed, since we are a small cul-de-sac, we are on the lower end of the pecking order. He noted that he has no problem with that and when they plow, we might get two lanes and when there is a big snow as we have had in year's past, they put the snow into the vacant lot #84 that is two lots away from the Fedullo's home.

Mr. Wagner noted that he has no difficulty with what the Fedullo's are asking for and he and his wife believe that a variance is appropriate for this. He noted that he respects the right-of-way issue but he believes that the pole is on Mr. Fedullo's land and not within the traveled portion of the roadway. He noted that there are very few kids in that location and once you get to the cul-de-sac, everyone can see everyone. He noted that this is very important as there is no other place to put it as it can't go in the front yard since you can't play in the grass. He noted that you can't put the hoop on the driveway as it is on an incline and when you asked the question about a portable hoop, he noted that within the last two nights, with the hurricane winds, he would not want to have a portable basketball hoop outside. Mr. Sirb noted that is when you put it away. Mr. Wagner noted if you have a chance to do that but if you are at work and don't have a chance to do that and it blows over and hurts someone or damages property that is why he noted that he would not want a portable basketball hoop.

Mr. Wagner noted that his wife Teresa is present with him and they both support this 100% and indicated that he respects ordinances as a municipal solicitor so he also says that his support comes with his knowledge and practice of 36 years as a municipal solicitor.

Mr. Sirb questioned that he understands the points about plowing and that it is a hazard, and he does not like the idea that it is located in front of a fire hydrant, however the fire hydrant is accessible. He noted that the problem with the overhang bothers him, but from owning hoops like that he questioned if it could be turned in. He questioned if it was adjustable. Mr. Fedullo answered that he was not sure of that. He noted that this one is adjustable height wise, probably only being six feet and a standard hoop that could be raised to ten feet, but it should be able to be turned. He noted that would take away the overhang part of the issue. He noted that he is stuck on the issue that Mr. Stine brings out questioning if the Township would need to sign off on variance if it was granted. He questioned if it was feudal to vote on the request. Mr. Turner noted if he had to bet, he would think that it is not the Fedullo's property, and it belongs to the Township.

Mr. Sirb questioned Ms. Moran as the representation of the Township if they were able to turn the backboard back would there be an issue. Mr. Stine answered that the issue becomes that the Township will not allow private obstructions in our public right-of-way. He noted that the only ones that we are required to allow are mailboxes as the postal service says we have to. He noted that we are required to allow political signs as the first amendment states we have to. He noted that we are required to allow utility poles in the right-of-way as the PUC says we have to. He noted that other than that, we don't allow people to put private obstructions within the right-of-way. He noted that the right-of-way extends beyond the curb and it doesn't stop at the curb as was stated before, it goes back to where fire hydrant is. He suggested that it is a minimum of ten feet in back of the curb.

Mr. Wagner stated that he is very much confused with this comment. He noted as a property owner, is it the Township's opinion that the Township owns 25 feet back from the road on his property. Mr. Stine answered that he does not know if it is 25 feet. Mr. Turner noted that you must look at the deed but typically the deed runs to the edge of the street right-of-way and the street right-of-way is almost always greater than what the cart way is. He noted in a development of this age, it would be almost universal that the land within five to ten feet of the curb does not belong to the property owner. He noted that it belongs to the Township as it was deeded to the Township as part of the deed of dedication of the street. Mr. Wager answered that he would be very much surprised with all due respect if that was the case. Mr. Turner noted that Mr. Staub would agree with him as he has designed these subdivisions. Mr. Staub noted that is the standard process to have a right-of-way that is much wider than a typical cart way and even around a cul-de-sac. Mr. Wagner noted that he is not arguing that issue, you can have a right-of-way but the property owner owns the land and you have the right to use the land. Mr. Turner noted that he would be willing to bet Mr. Wagner that if you look at your deed your deed starts at the right-of-way, not at the curb. Mr. Miller noted that is for any modern subdivision. Mr. Turner noted that is correct and this is a modern subdivision. Mr. Wagner noted that he would be shocked if he saw that in all due respect. He noted that he understands the concept of the right-of-way, but to suggest that there is an ownership. Mr. Turner noted that your deed starts at the edge of the right-of-way. He noted that the right-of-way is probably 50 feet and the cart way is probably 30 feet so there is probably a good ten feet on either side of the curb. Mr. Stine noted when the streets are dedicated to the Township fee simple. Mr. Wagner noted that he understands that. Mr. Stine noted that the street is not only the cart way but it includes what goes beyond the right-of-way. Mr. Wagner noted then it is not a right-of-way. Mr. Stine noted that may be true and the Township may just own it, but it still doesn't mean that you can put a private obstruction in it.

Mr. Fedullo noted that he is asking for the Township to consider this as an exception to rule. He noted that he is not asking to change the ordinance so if someone else comes to the Township noting that the Fedullo's have one, and they came in front of the Board and made their case to the fact that it is a safe place to have it, it is not on a busy street, it is on cul-de-sac, as it is not a safety issue and not a hazard to trucks. He noted that he is asking for the Township to look at this as an individual case, not as a case Township-wide, but as an individual lifetime resident's case.

Mr. Sirb noted that he agrees with everything Mr. Fedullo states; however as a member of this Board when he is hearing from the solicitor that it is not proper, it changes the ball game for him. He noted that he kind of had that inkling when he came here, but he wasn't sure. He noted that he did not see a sidewalk as he is hesitant, but if you don't own the property that you put a permanent structure on, he is not too sure the Board... Mrs. Fedullo questioned why we weren't advised of that in any of the letters... Mr. Fedullo questioned what any of the other basketball hoop people aren't with us. Mr. Sirb noted that he did not have an answer for that. He noted that it is a good question, but the Township had to act due to receiving a complaint. He noted that they can not fail to respond to a complaint. He noted from what he has heard from Mr. Turner and Mr. Stine, this is not your property. He suggested that the Board can't grant a variance if it is not your property.

Mr. Dowling noted that it out to be the Township's position if this is their land, they should encourage this, for kids to exercise and get out and play basketball. He noted if the Township owns this land and it is not a hazard to traffic or safety, which he did not think it was, the Township should encourage this. He noted, hear we are listening to a case for this location; he is troubled that we either have to go through this hearing for a homeowner who is trying to do something to have kids outside exercising and the Township should encourage this, rather than trying to stifle it. He noted if it was on a street with through traffic this would not be an issue. He noted if this was an issue where the Township might widen the street; it would not be an issue. He noted that the likelihood of this street ever being widened is virtually minimal, as it will not happen. Mr. Sirb agreed.

Mr. Dowling noted that there is no other traffic on this street and as someone who looks at these instances for safety all the time, there is no risk to anyone here and if there was, it would primarily be on the homeowner. He noted that his issue is why the Township is discouraging people from this and not encouraging them. He noted that this is the perfect example of something that causes no harm and it would not set a precedent because of where it is and how unique it is. He suggested that we should grant it.

Mr. Sirb noted that he agrees with Mr. Dowling as he is willing to grant it but he questioned if we can do it. He noted if we would grant this, what would be the recourse. Mr. Turner noted that the Township is a party and they could appeal the decision of the Board if they feel in fact that it is their property, they could seek relief in court to remove an obstruction on their property.

Mr. Sirb noted that this is not an easy one. He noted that the Fedullo's have the opportunity to pay their fee and they are owed a vote. He noted that the decision is up to the Board and the ball is back in the Township's court.

Mr. Sirb questioned if anyone else wished to be heard on this variance.

Mr. Sirb noted that hearing no further testimony by the applicant, Board members, or the audience, the board has 45 days to render a decision relative to this application. He noted that we could take the 45 days to ensure that they do or do not own the property but his gut feeling is that they do not own that part of the property or we could take action today.

Mr. Dowling noted that we should take action today, even for a cul-de-sac, the Township has some right-of-way. He noted that it may be less than 25 feet, and this is right at the curb, so if it was in the right-of-way it is there.

Mr. Fisher explained that he built a house on a cul-de-sac less than ten years ago and he knows for a fact that the curb and a four foot grass strip and the four foot sidewalk do not belong to him. He noted that the property line is on the house side of the sidewalk. He suggested that he is 99% sure that is the case in anyplace whether there is a sidewalk or not. He noted that he has the same kind of cul-de-sac at this house.

Mr. Dowling noted if the homeowner wanted to put moveable structure at the curb and take it down every-so-often, that would not violate the insurance. He noted that it would be a permanent structure. He noted that it could be up just as long as a permanent structure but it could be moved. He noted that all of the same issues would apply. Mr. Staub suggested that is why the Township lets the people get away with the portable structures, noting that many developments have 20 or 30, the large majority are the roll away types. He noted that there are several permanent structures but the portable ones are all over the place. He noted that some are in the street, some in grass strips, and some are in the driveway.

Ms. Fedullo noted that many of the temporary hoops are filled with sand or concrete and they are not going anywhere. They are not roll away. She noted that Mr. Wagner has a portable one and he rolls it out, but the majority of hoops are not temporary in the public streets.

Mr. Dowling noted that there are valid arguments on both sides but he will come down in favor of the homeowner for the reasons that he stated. He noted that both positions are valid.

Ms. Dowling made a motion to grant the request for variance for Docket #1321. Mr. Sirb seconded the motion. He noted that he conditions his variance that if the top is movable that when the children are not playing with the hoop, the board would be turned in toward the house. Mr. Dowling accepted the condition even though he did not if it could be. Mr. Fedullo answered that he did not know if it could be turned. Mr. Dowling noted as the children get older, the net would increase in height. Mr. Turner conducted the following roll-call vote: Mr. Fisher, nay; Mr. Staub, nay; Mr. Dowling, aye; Mrs. Cate, nay; and Mr. Sirb, aye. Mr. Turner noted that the motion was denied.

Mr. Sirb encouraged the applicant to work with the Township to put in a portable basketball hoop but the permanent one will not do.

The hearing ended at 7:53 p.m.

Submitted by:

Maureen Heberle
Maureen Heberle
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON
APPLICATION OF : TOWNSHIP ZONING HEARING BOARD
: DAUPHIN COUNTY, PENNSYLVANIA
: ANTHONY and JENNY : DOCKET NO. 1321
FEDULLO :

DECISION DENYING VARIANCE

The applicants seek a variance to allow the installation of a basketball backboard within the front yard setback. A hearing on the application was held on November 1, 2012.

Facts

1. The applicants and owners of the property in question are Tony and Jenny Fedullo of 6613 Richmond Court, Harrisburg, Pennsylvania 17111.
2. The property in question consists of a residential property located on a cul de sac. The property is improved with a single family dwelling known as 6613 Richmond Court, Lower Paxton Township.
3. The applicants have permanently installed a basketball pole, backboard and hoop adjacent to the property curb line. The backboard is installed so that the public street serves as the playing court and the hoop overhangs the curb. The pole was installed with a permit and the applicants desire to keep the pole in its present location.
4. Due to a sloping driveway, installing a backboard on the garage does not result in a suitable playing surface.
5. In addition to the applicants, the Board heard testimony from Rich Wagner, a neighboring property owner who spoke in favor of the application. Appearing on behalf of the Township were Matthew Miller, Township Engineering and Maintenance Technician, and Stephen Stine, Township Solicitor. Mr. Miller testified that

structures in the right of way posed safety hazards by encouraging play in the street and they created obstacles to snow removal by Township employees. Mr. Stine argued on behalf of the Township that the applicants lacked the legal authority to seek a variance to erect a structure on land over which the Township has a vested property interest.

6. Notice of the hearing was posted and advertisement made as required by the ordinance.

Conclusions

1. Section 307.C of the ordinance requires accessory structures be located outside of the property setbacks. The backboard and pole as erected violate this section of the ordinance.

2. Article 111.D.3 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that the property is not burdened by a hardship which prevents the reasonable use of the property. The property is already improved with a single family dwelling and while a basketball play area may be desirable from an exercise viewpoint, it is not essential for the reasonable use of the property.

4. Granting the variance would be contrary to the public safety and welfare. The Board finds as credible the testimony of Mr. Miller that accessory structures within the right of way pose a hazard to Township employees performing roadway maintenance.


5. The Board further finds that in the face of the opposition of the Township, the applicants lack standing to apply for a variance over property they do not own. The applicants' pole is from all credible testimony, located within the Township right of way and not within the deeded property owned by the applicants.

Decision

In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variance requested should be and is hereby denied.

Date: 11/29/12

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD


Sara Jane Cate


Jeffrey W. Staub


Watson Fisher

Board members Dowling and Sirb dissent from the decision of the Board.

LOWER PAXTON TOWNSHIP ZONING HEARING BOARD

Meeting of November 1, 2012

Members Present

David Dowling
Sara Jane Cate
Greg Sirb
Jeffrey Staub
Watson Fisher

Also in Attendance

James Turner
Dianne Moran

Docket 1324

Applicant: St. Ann Byzantine Catholic Church

Address: 5408 Locust Lane
Harrisburg, PA 17109

Property: 5408 Locust Lane
Harrisburg, PA 17109

Interpretation: Article 714.A - Permanent signs: Freestanding Signs: Maximum Area = 40 square feet.
The applicant seeks a variance to allow a second freestanding sign on the property

Article 717.C.6 – Prohibited Signs Locust Lane Overlay District
Changeable Copy or Message Board Signs are prohibited in the Locust Lane Overlay District
The applicant is seeking a changeable text sign.

Grounds: Article 714 and Article 707 of the Lower Paxton Township Zoning Ordinance pertains to this application.

Fees Paid: September 27, 2012

Property Posted: October 23, 2012

Advertisement: Appeared in The Paxton Herald on October 17 and 24, 2012.

The hearing began at 7:53 p.m.

Mr. Sirb swore in Jeffrey Shank. Mr. Jeffrey Shank noted his address was 700 Weldon Drive, York, Pennsylvania. Mr. Sirb questioned what his position was with the church. Mr. Shank explained that Fr. Michael Popson, who is the sole priest for the parish, was called away

on church business. He explained that he is a principal with K.E. Shank, Architectural Design Company; the firm who is doing the sign work for the church.

It was noted that Ms. Moran was under oath from the previous testimony.

Ms. Dianne Moran advised that the appropriate fees were paid on September 27, 2012. The proper advertisements appeared in The Paxton Herald on October 17 and 24, 2012. The hearing notices were posed on October 23, 2012

Ms. Moran noted that this hearing applies to Article 714.A Permanent signs – freestanding signs with the number of freestanding signs per lot is one and the applicant seeks a variance to allow a second freestanding sign on the property. She noted that the other variance is for Section 771.C. Prohibited signs in the Locust Lane Overlay District; changeable copy or message board signs are prohibited in the Locust Lane Overlay District. She noted that the applicant is seeking a changeable text sign.

Mr. Sirb noted that it is customary for the Board to mark the applicant for variance as an exhibit and he questioned if the applicant had any problems with that. Mr. Shank answered no.

Mr. Shank explained that St. Anne Byzantine Church would like to reconstruct a stone masonry sign of the type that was originally on the property in the 1970's and removed in the 1990's as a result of its deterioration. He noted that the church would also like to construct a changeable text sign to announce to the community various activities that would take place on their campus for social or religious service related.

Mr. Shank noted that one free standing sign is permitted per lot. He explained that the church owns ten acres of property consisting of three parcels, two of which have frontage on Locust Lane and in theory they could have constructed one sign on each parcel. He noted that the location of the lot and the egress and exit from their property makes it more conducive to put both signs on the western property. He noted that the total amount of road frontage for both lots is 450 feet. He explained that the church would like to place the changeable text sign at the western end of the lot providing a 140 foot separation with a driveway into the property between that and the reconstruction of the freestanding sign. He noted that sign would identify the property of St. Anne Byzantine Catholic Church.

Mr. Shank noted that both signs meet the ordinance as far as the maximum square footage allowed of 40 square feet. He noted that the stone sign is proposed to be 40 square feet and the changeable text sign would be 20 square feet, half of what is allowed. He noted that both signs would be outside the PENNDOT right-of-way. He noted that the changeable text sign is five feet off the right-of-way line and the stone masonry sign would be located 25 feet off the property line.

Mr. Shank noted that the second variance request is for a changeable copy or message board sign. He noted that the Locust Lane Overlay District runs about a two-mile stretch that does not permit the changeable text sign. He noted that there are four churches that are located

along Locust Lane, two have changeable text signs, one does not, and he is applying for one for this church

Mr. Shank noted if you look at the exhibit labeled S-1, it shows the property and the located for the church event sign in front of the rectory that is being reconstructed at this time. He noted that the property identification sign with the flagpole is 15 feet off the PENNDOT right-of-way. He noted that drawing A-1 shows examples of what the signs would look like. He noted that the changeable text sign is eight feet long, two and a half feet from the top of the sign that is seven feet from the ground. He noted that the sign will be used to announce various events that occur at the church. He noted that it complies with the lighting requirement for brightness and it will also control the frequency from one message to the next message displayed. He noted that the stone masonry sign will have a flagpole on it and it would identify the property as Saint Ann Catholic Church Byzantine Rite.

Mr. Shank noted that the Exhibit 1 on page six shows what the identification sign looked like in the 1970's. He noted that the foundation for the sign is still there and the new sign would be constructed on that existing foundation. He noted that Exhibit 2 shows the proposed placement of both signs driving west on Locust Lane. He noted that the third house or closest house is also on the church property but it is on another parcel owned by the church. He noted that Exhibit 3 shows the signage driving east on Locust Lane. He noted that there is a portable sign located between the two proposed signs, but it will be removed. He noted that there will only be two signs on Locust Lane if the variance is granted.

Mr. Shank noted page seven shows the other two churches located on Locust Lane that have the changeable text sign. He noted that both of those signs are 20 square feet in overall area; the same proposed for Saint Ann Church.

Mr. Shank concluded his testimony.

Mr. Dowling questioned if the Calvary Church received a variance for their changeable text sign. Ms. Moran answered that they did not require one as they had a changeable copy sign therefore they could continue the use. She noted that they had a previous sign. Mr. Dowling suggested that it looked like a new sign. Ms. Moran answered that it is but they had one before. Mr. Dowling questioned if both signs are lighted. Ms. Moran answered yes.

Mr. Staub questioned why the church didn't combine the changeable copy within the masonry sign. Mr. Shank answered that a parishioner from the church donated money to replace the masonry sign in a similar style as the original sign. He noted that he wanted to maintain the 1970's look that is the architecture of the church building. He noted that it is an aesthetic issue. He noted that it would be less expensive to put the two together and he would have had to reduce the sign only allowing 40 square feet for both signs and he would have had to change the text. He noted that the sign was made to fit the old foundation from the previous sign that had been placed. Mr. Staub noted if he was to vote for relief he would agree to a larger single sign as opposed to two separate free standing signs.

Mr. Shank explained if he reduced it to one sign then he would not be here this evening, or if he moved the changeable text sign to the adjacent property then we wouldn't be here either. Mr. Turner noted that you need the variance for the changeable text sign. Mr. Shank noted that Mr. Turner was correct.

Mr. Turner questioned if the identification sign will be lighted. Mr. Shank answered no. Mr. Turner questioned if any spotlight would be on it. Mr. Shank noted that he is not proposing a spot light on the sign.

Mr. Sirb questioned if the Board had any questions.

Mr. Sirb questioned if anyone in the audience wished to be heard on this application.

Mr. Sirb questioned if the Township had a position for this variance. Ms. Moran answered no.

Mr. Sirb noted that normally it is the process of this Board to combine signs, and he is not certain that this property needs two signs. Mr. Shank noted that the property had a sign on the front and whether it was an approved sign he did not know but the location where the changeable text sign is to be located is the same as where the portable sign is now located. He noted that people have become accustomed to looking at that location for signage and that is why the church wants to preserve that location. He noted that there is electricity to that area.

Mr. Staub questioned if the person that is gifting the sign, does he have an objection to combining the signs. Mr. Shank noted that he does not know and he was only told that there was a party who was interested in contributing to the reconstruction of the stone masonry sign that was removed in the 1990's.

Mr. Turner noted that the proposed sign is not identical to the one that was removed. Mr. Shank answered that it is not. He noted that the rectory is under construction, and they are putting a new facade on the face of the building. He explained that they want to carry the stone from that building to the signage. He noted that they also want to pick up the same color theme from their Family-Life Building that is brick. He noted that the churches like the changeable text sign as they are trying to reach out to the community to draw people in for religious and social events.

Ms. Cate questioned if the property is between the two driveways. Mr. Shank answered yes as it takes a horseshoe arrangement at the sanctuary. He noted that the location of the original sign is the perfect spot for the new signage. He noted that the changeable text sign is not as stately as the stone masonry property identification sign and he suggested that it would greatly change the appearance to that sign if a changeable text sign was added. He noted that is the reason for located it further to the west of the property identification sign.

Mr. Sirb noted that hearing no further testimony by the applicant, board members, or the audience, the board has 45 days to render a decision relative to this application.

Mr. Fisher made a motion to approve Docket #1324. Ms. Cate seconded the motion. Mr. Turner conducted the following roll-call vote: Mr. Fisher, aye; Mr. Staub, aye; Mr. Dowling, nay; Mrs. Cate, aye; and Mr. Sirb, aye. Mr. Turner noted that the motion carried.

The hearing ended at 8:10 p.m.

Submitted by:

Maureen Heberle
Maureen Heberle
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON
: TOWNSHIP ZONING HEARING BOARD
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA
:
SAINT ANN BYZANTINE : DOCKET NO. 1324
CATHOLIC CHURCH :

DECISION GRANTING VARIANCE

The applicant seeks a variance to allow a second freestanding sign with changeable copy. A hearing on the application was held on November 1, 2012.

Facts

1. The applicant and owner of the property in question is Saint Ann Byzantine Catholic Church of 5408 Locust Lane, Pennsylvania 17109. Appearing on behalf of the applicant was Jeffrey Shank, architect.
2. The property in question consists of a ten acre parcel with 450 feet of frontage on Locust Lane. The parcel is within the Locust Lane Overlay District. The property is actually divided into three parcels although it is used as one property.
3. The property is improved with a church and various other outbuildings.
4. The applicant proposes to erect a freestanding monument style sign between the two driveways servicing the property. This sign would be 40 square feet as allowed under the ordinance and would incorporate a flagpole and brick pillars to match the existing building façade. Approximately 140 feet to the west the applicant proposes to erect a second freestanding sign with LED illumined changeable copy. This sign would be 20 square feet and will be used to promote Church events. The sign would comply with lighting and frequency of text change requirements established by the Township.

5. Notice of the hearing was posted and advertisement made as required by the ordinance.

6. No one other than the applicant appeared to testify either of favor of or against the proposed variance.

Conclusions

1. Section 714.A of the ordinance limits freestanding signs to one per lot. Section 707.C.6 prohibits changeable copy or message board signs in the Locust Lane Overlay District. The proposed second sign would violate these sections of the ordinance.

2. Article 111.D.3 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that the property in question is burdened by a hardship consisting of the total frontage and multi-parcel nature of the lot. These factors make reasonable identification of the Church and its activities difficult without some relief from the strict provisions of the ordinance.

4. Granting the variance will not alter the essential character of the neighborhood nor impair surrounding property values. The signs as proposed are modest in area given the overall lot size and frontage. Further, their impact is diminished by not

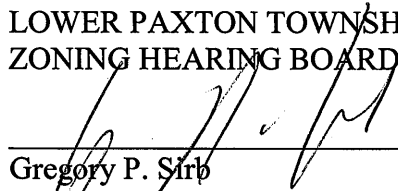
illuminating the larger monument sign. There are also other churches in the vicinity with similar message boards.

Decision


In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variance requested should be and is hereby granted allowing the erection of two monument signs, one with an area of 40 square feet and one with 20 square feet with an illuminated changeable text. In all other respects design and installation shall be in strict accord with the plans and testimony submitted to the Board.

Date: 11/29/12

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD



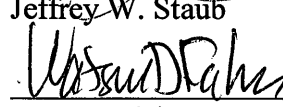
Gregory P. Sirb



Sara Jane Cate



Jeffrey W. Staub



Watson Fisher

Board member Dowling dissents from the decision.

LOWER PAXTON TOWNSHIP ZONING HEARING BOARD

Meeting of November 1, 2012

Members Present

David Dowling
Sara Jane Cate
Greg Sirb
Jeffrey Staub
Watson Fisher

Also in Attendance

James Turner
Dianne Moran
Attorney John Ogden

Docket 1325

Applicant: Riptide Property Maintenance for Buffalo Wild Wings

Address: 1180 S. Cameron Street
Harrisburg, PA 17101

Property: 4600 Jonestown Road
Harrisburg, PA 17109

Interpretation: Article 714.A - Permanent signs: Planned Center Signs
The number of wall signs permitted for a multi-tenant building is one per tenant.

The applicant seeks a variance from the number of and maximum area of wall signs for a multi-tenant building.

Wall Signs: Maximum area for multi-tenant buildings:

Suite Tenant Sign	Allowable sign area
5,000 to 10,000 square feet	60 square feet

Grounds: Article 714 of the Lower Paxton Township Zoning Ordinance pertains to this application.

Fees Paid: October 5, 2012

Property Posted: October 23, 2012

Advertisement: Appeared in The Paxton Herald on October 17 and 24, 2012.

The hearing began at 8:11 p.m.

Mr. Sirb swore in Matthew Mandell, 2014 Wisteria Lane, Lafayette Hills, Pennsylvania. Mr. Mandell explained that he works for Framco Real Estate, assisting national restaurant chains in finding locations in Pennsylvania.

Mr. Sirb swore in Ken Bolinger, 265 Willis Road, Etters, Pennsylvania. Mr. Bolinger explained that he is the sign installer, and would be involved with the installation of the signage.

It was noted that Ms. Moran was under oath from the previous testimony.

Ms. Dianne Moran advised that the appropriate fees were paid on October 5, 2012. The proper advertisements appeared in The Paxton Herald on October 17 and 24, 2012. The hearing notices were posed on October 23, 2012

Ms. Moran noted that this hearing applies to Article 714.A permanent signs – Article 714.A - Permanent signs: Planned Center Signs. The number of wall signs permitted for a multi-tenant building is one per tenant. The applicant seeks a variance from the number of and maximum area of wall signs for a multi-tenant building. The applicant is entitled to 60 square feet.

Mr. Sirb asked the attorney to identify himself. Attorney John Ogden noted that he practices in York, Pennsylvania and is representing Buffalo Wild Wings. He questioned if the Board received the packet of information for the hearing. Mr. Sirb answered that it did.

Mr. Sirb noted that it is customary for the Board to make the applicant for variance an exhibit and he questioned if the applicant had any problems with that. Mr. Ogden answered no.

Mr. Sirb noting that looking at Exhibit 1, what signage is Mr. Ogden requesting. Mr. Ogden requested to approach the Board. He questioned Mr. Bolinger if he was familiar with Exhibit 1. Mr. Bolinger answered that he was. Mr. Ogden questioned if it was his drawing or Buffalo Wild Wing's drawing. Mr. Bolinger answered that it was Buffalo Wild Wing's drawing.

Mr. Ogden noted that the bottom picture on Exhibit 1, what it represents. Mr. Bolinger answered that it represents the front side of the Buffalo Wild Wings facing Route 22. Mr. Ogden noted that this is located in the Colonial Park Mall and it would be at the corner of Route 22 and Colonial Road. Mr. Bolinger answered yes. Mr. Ogden questioned that the bottom sign on Exhibit 1 would be the left side of the mall if you were looking at it from Route 22 and the main entrance. Mr. Bolinger answered yes. Mr. Ogden questioned if there would be one sign on this side. Mr. Bolinger answered yes.

Mr. Ogden questioned what the top part of the exhibit represents. Mr. Bolinger answered that it represents the side, viewing it from Colonial Road. He noted that it is a sign that was added to the Buffalo Wild Wings using the smaller channel letter signs for identification on the side of the building facing Colonial Road. Mr. Sirb questioned if that is over an entrance as well. Mr. Bolinger answered that it is not an entrance as it is an outdoor seating area. He noted that it has a canopy with tables outside. Mr. Ogden suggested that it would essentially be a deck. Mr.

Bolinger answered yes. Mr. Ogden noted that it has two entry doors but it would be located within a fenced in area. Mr. Bolinger answered that was correct.

Mr. Ogden questioned if emergency personnel would enter this way if there was a fire or emergency of some kind. Mr. Bolinger answered yes.

Mr. Ogden questioned what is to the left of this picture. Mr. Bolinger answered that it is Irving Shoes.

Mr. Sirb questioned Ms. Moran if this variance concerns two sides. Mr. Moran answered yes. Ms. Moran questioned if Mr. Bolinger was only looking at these two signs and no other graphic anywhere else. Mr. Bolinger answered yes.

Mr. Sirb questioned how many signs are allowed by ordinance. Ms. Moran answered that they are allowed one sign of 60 square feet. Mr. Sirb noted that they are proposing two signs at what size. Mr. Ogden noted that the top sign is 56 square feet on the side facing Colonial Road... Mr. Staub questioned if there were any signs on this side of the mall before. He noted that he remembers giving Irving's a variance. Ms. Moran noted that she did not recall if there were any signs on this corner. Mr. Ogden noted that we just looked at it prior to the hearing. Mr. Bolinger noted that there was a dumpster at the side of the building and a salon on the side of the building. He noted that it was not a main entrance for the salon because people entered through the interior mall.

Mr. Ogden questioned how many wall signs Irving's Shoes has. Mr. Bolinger answered that they have three awning signs. Ms. Moran noted that they were granted by a variance.

Mr. Ogden noted around the corner is Boscov's. Mr. Bolinger answered that was correct and they have three signs on the one side. Mr. Ogden noted around the back is the Sears store. Mr. Bolinger noted that they have a sign on the back side of the building, none on the end, and two on the front side. Mr. Ogden noted that is a total of three. He questioned how many signs are on the Bon Ton building. Mr. Bolinger answered that they have one on each side. Mr. Ogden noted that they have two signs.

Mr. Fisher questioned what the square footage of the other sign is.

Mr. Sirb questioned if the reason for the additional sign is that the side is facing a different way. Mr. Bolinger answered he lives in the area and uses the mall as well, and if you come in the main entrance from Colonial Road, it is a main identification for that side of the building to know where the restaurant will be. He noted that it would provide for the general identification for drivers who have stopped to find the location. He noted that it would help the patrons to get there quickly.

Mr. Ogden noted that the square footage as marked on the plan is 64.5 square foot for the main sign on the front that contains the logo and the writing. Ms. Moran questioned what the measurements were. Mr. Bolinger noted that it was 9.4 feet by 14 feet. Mr. Sirb questioned what

the measurements were for the side signage. Mr. Bolinger answered that it is 56 square feet. Ms. Moran noted that the one sign is roughly 126 square feet. She noted that she did not see the calculation on the signage. Mr. Bolinger noted that the smallest box is 6 x 10.9 feet. Mr. Turner noted that according to your drawings, the Buffalo is six feet tall and the overall sign is 14 feet. Mr. Bolinger noted that the top portion that is black is 14 feet but the writing portion is marked 10 from the top of the Buffalo to the bottom of the word wings. He noted that the width is six foot, so it is 6 foot by 10.9 foot.

Mr. Ogden questioned if the black part is painted on or is it part of the typical sign. Mr. Bolinger answered that it is a fabric on the background, like the awning. Ms. Moran wanted to know what the smallest box around all the graphics would be. Mr. Ogden noted that it would be the 10.9 foot x 6 foot totaling 64.5 square feet. Mr. Sirb noted that the main sign is 64.5 square feet and the sign that would face Colonial Road is 56 square feet.

Mr. Sirb noted that the applicant is allowed one sign for a total of how much square footage. Ms. Moran answered 60 square feet.

Mr. Ogden noted that it would depend on how the Board interprets this ordinance. He noted if he was asking for two signs it would permit 120 square feet total and the total for these two signs is 120.5 square feet so he would need a variance for the .5 square foot.

Mr. Ogden questioned Mr. Mandel how he is involved with Buffalo Wild Wings. Mr. Mandel answered that he assists Buffalo Wild Wings in finding locations in Pennsylvania, New Jersey and Delaware for their corporate operating stores. Mr. Ogden questioned Mr. Mandel how long he has been working with Buffalo Wild Wings. Mr. Mandel answered approximately three years. Mr. Ogden questioned how many stores you have placed Buffalo Wild Wings in. Mr. Mandell answered ten stores.

Mr. Ogden questioned if Mr. Mandel has done any malls in Pennsylvania. Mr. Mandel answered that this unit will be one of the first mall deals for the corporate operated restaurants, noting that they have only one other located in the "Mall of America". Mr. Ogden questioned how many locations are there for Buffalo Wild Wings throughout the country. Mr. Mandell answered approximately 875. Mr. Ogden questioned why they chose the mall in this location. Mr. Mandell answered that Route 22 is an attractive retail corridor with many restaurants and Buffalo Wild Wings wanted the location to be close to the mall along Route 22. He noted that he was not able to find another location along Route 22.

Mr. Ogden questioned if most of the free standing stores similar to the Red Lobster at this mall are at a standing building. Mr. Mandel answered that was correct; about half the stores each year are free standing and half are end caps as in this situation but are typically located in shopping centers versus malls.

Mr. Ogden questioned if it was in a free standing store, similar to the Red Lobster at that location, how many signs they would typically have on each sign. Mr. Mandell answered that it would be four. Mr. Ogden questioned one on each side. Mr. Mandell answered yes. Mr. Ogden

questioned if that is how they are all as far as Mr. Mandel was aware throughout the franchise in the country. Mr. Mandel answered that he would pursue the maximum that the Township would allow.

Mr. Ogden questioned if there were stores that took up this location before Buffalo Wild Wings negotiated a lease. Mr. Mandel answered, that prior to his approaching the mall, there was a hair salon, adjacent retail store and two or three food court operated restaurant that were small. Mr. Ogden questioned how many total would that be. Mr. Mandell suggested that it was five or six stores. Mr. Ogden questioned how many square feet is this store going to be. Mr. Mandell answered 6,500 square feet.

Mr. Ogden noted if under the ordinance there were six stores, could they each have six signs. Mr. Mandel noted that his interpretation of the ordinance states that. Mr. Ogden questioned if any of those stores had signage out on the west end. Mr. Mandell answered where we proposed to put the words Buffalo Wild Wings; he did not have that information.

Mr. Ogden noted that is all he has for this witness.

Mr. Sirb questioned if the reason for the second sign is what. Mr. Mandell answered that the sign is a high traffic road, somewhere around 15,000 cars a day, noting from a safety standpoint having customers easily locate the store and not having to navigate through the parking lot or circle the mall. He noted from a fire safety standpoint, emergency services would be able to identify the location as well.

Mr. Staub questioned how many square feet is the restaurant. Mr. Ogden answered 6,500 square feet. He noted Ordinance 714. A, indicated that between 5,000 and 10,000 square feet, a 60 square foot sign is the allowable sign area.

Mr. Ogden questioned Ken Bolinger what is his business. Mr. Bolinger answered that he is a sign manufacturer and sign installer. Mr. Ogden questioned what the name of his business is. Mr. Bolinger answered Signs and More. Mr. Bolinger questioned where it is located. Mr. Bolinger answered that it is located at 1180 South Cameron Street. Mr. Ogden questioned if Mr. Bolinger was approached by representatives of Buffalo Wild Wings to create and install a sign at this location. Mr. Bolinger answered that he was asked to install the signage that is factory provided to keep commonality.

Mr. Ogden questioned if he filed the application for the variance. Mr. Bolinger answered yes. Mr. Ogden questioned in the package, did Mr. Bolinger provide the consent form from the owner of the mall. Mr. Bolinger answered that he did.

Mr. Ogden questioned the Board if they had a copy of the consent from the owner of the mall. Mr. Turner answered yes.

Mr. Ogden questioned what the size of the sign facing to the west which will have the letters Buffalo Wild Wings, what is the square footage for that is. Mr. Bolinger answered that it

is 56 square feet. Mr. Ogden noted on the front of the building, facing Route 22, will that be the main logo if approved. Mr. Bolinger answered yes. Mr. Ogden questioned if it would be 64.5 square foot sign. Mr. Bolinger answered yes. He questioned if that is the only signage that they are proposing at this location. Mr. Bolinger answered yes.

Mr. Ogden noted under the ordinance, we have to prove that due to the physical characteristic of the lot that it creates a hardship not to have a sign at that location. He noted for this case, the physical characteristic of this lot is that it is a corner property, an end cap. Mr. Bolinger answered yes. Mr. Ogden questioned what is the rationale for having a sign on both sides as opposed to only having a sign on the front or on the side. Mr. Bolinger answered that there are two main entrances to the mall and by having a sign on the Colonial Road side you would see it instantly when entering the mall area for the main traffic. He noted that a majority of the people will enter the mall from that location as it is an easy way to enter coming from I-83. He noted that they would easily see it and not have to look around and cause a traffic hazard.

Mr. Ogden questioned if Mr. Bolinger was familiar with the mall, Route 22 and Colonial Road. Mr. Bolinger answered that he was. He questioned if it was a high traffic area. Mr. Bolinger answered that it was a very high traffic area. He questioned if that is one of the reasons why Buffalo Wild Wings would want to locate in that area. Mr. Bolinger answered, obviously, yes. Mr. Ogden questioned if this would assist with traffic flow if people knew exactly where the restaurant was located. Mr. Bolinger answered yes. Mr. Ogden questioned what about fire, EMS, police services, if they came to a call there and it wasn't marked, it was just a door window. Mr. Bolinger answered that they would obviously be able to see it driving by quickly and in case of a fire they would come up Colonial Road and use the mall entrance and the driver would easily see it.

Mr. Ogden questioned if this space is what was available to Buffalo Wild Wings, they did not create the space. Mr. Bolinger answered that is correct, they created a few smaller locations like the maintenance area as there was a dumpster on the side and they cleaned up the corner of the mall. Mr. Ogden questioned if dumpsters were in that area before. Mr. Bolinger answered that the mall had a dumpster corral on the side, and Buffalo Wild Wings created a new clean area where the awning area is for outdoor eating.

Mr. Ogden noted that a requirement for a variance under Article 3-A, IV, iii D is that it can't alter the essential character of the neighborhood or district, and in this case, will it alter it since it is cleaning it up and getting rid of the dumpster. He questioned if it would alter it for the better or worse. Mr. Bolinger answered that it would be for the better and it is making it a straight line on the side of the building as there are no obstacles protruding out as there use to be with the dumpster corral. He noted that the curb appeal is much nicer for that area. Mr. Ogden noted that the ordinance permits one sign and Buffalo Wild Wings is asking for two signs with a half foot larger area. He noted that one of the requirements for the variance is, if authorized, that it would represent the minimum area that would afford relieve and represent the least modification possible. He questioned if that is the only reason why the request for two signs rather than one. Mr. Bolinger answered yes.

Mr. Ogden noted as far as the half foot variance goes, is the logo that you were provided by for the 64.5 foot sign and the Buffalo Wild Wings text, the 56 foot sign, and is that standard use within the company so that everything is uniform. Mr. Bolinger answered that is correct. Mr. Ogden questioned if the sign was built just for this location. Mr. Bolinger answered that they reduced the size of the main sign into the corridor and the channel letters they created. He noted that it is the same logo but they made it to fit and it appeals to the outside building. Mr. Ogden noted that it fits in with the sizes of the other signs like Boscov's and Sears. Mr. Bolinger answered yes.

Mr. Ogden questioned if Mr. Bolinger knew how much of an investment Buffalo Wild Wings had in this property. Mr. Bolinger answered that they had invested \$1.5 million in this project for improvements, creating better road frontage in front of the mall.

Mr. Ogden questioned, prior to the start of construction, when there were six separate uses in that space, where there any exterior signs. Mr. Bolinger answered that he was asked to do a lot of work with the salon; he believed there was one sign for the salon, back door entrance, but as far as the other signs he did not know. Mr. Ogden noted that there was at least one sign on that door. Mr. Bolinger answered yes.

Mr. Ogden questioned, in Mr. Bolinger's experience of constructing signs for restaurants, do they usually have signage on all sides of their restaurants. Mr. Bolinger answered that typically he tries to get at least signs in the main areas, noting that it is up to the municipalities in what they allow. He noted that they would like to have signs on all four sides, noting that they would like to have the whole building in signage, but they do what they can do. Mr. Ogden questioned if it would create a hardship by not allowing it to have a sign to identify their company for fire, EMS, police and the general public. Mr. Bolinger answered that he thought it would be a big problem because the majority of the people would enter from the Colonial Road entrance and as they are looking for the restaurant they will stop and look around and may cause someone else an issue that is rushing to another part of the mall. He noted that it could cause an issue there. He noted by having identification on the side, if a fire truck needed to get to the site quickly, or an ambulance, it would definitely help identify the location quickly for someone new to the area. He noted that anyone coming in that entrance would be able to see where they want to go.

Mr. Ogden questioned when he looked at the area before the hearing; it looks like they are recreating that entrance on the west side as well. Mr. Bolinger answered that it is a new entrance and the main entrance to the mall is on the front. Mr. Ogden questioned if the mall has undergone some renovations and would people be familiar with where certain things are located. Mr. Bolinger answered that was correct.

Mr. Ogden noted that is all he has.

Mr. Sirb questioned if members of the Board has any questions for the applicants.

Mr. Sirb questioned if the main entrance faces Route 22 and would there be another entrance from the mall. He questioned if they are the only entrances to the restaurant. Mr. Sirb noted where the side signage is proposed, are there any entrances along that side. Mr. Bolinger answered yes. Mr. Sirb noted so that we are clear, there are no other signs, no lights, it will only be these two signs and that is it. Mr. Mandell noted what you see on that sign is the mimic of the mall.

Ms. Cate questioned if there would be any signs on the awnings. Mr. Bolinger answered no. Mr. Ogden noted that there would be a sign on the menu board of the mall itself. Mr. Turner questioned if that would be inside. Mr. Ogden noted that there is one outside along Route 22. Mr. Mandell noted that the tenant sign should have one but he has not seen any photographs of that as the mall supplies that. He suggested that there is a space there. Mr. Staub questioned if you were discussing the free standing sign located by Mountz Jewelers. Mr. Mandell noted that was correct, the tenant sign. Mr. Staub questioned if there is a blank at this time. Mr. Mandell answered that he believes that there is; they will not be adding new spaces as they already have a predetermined space for that sign. He noted that he does not have any information on that yet.

Mr. Sirb questioned if anyone in the audience had anything to say on this application. No response was heard.

Mr. Sirb questioned if the Board members had anything more to add. No response was heard.

Mr. Sirb questioned if the applicant had anything more to add. Mr. Bollinger questioned if the plot plan was provided to the Board. Mr. Staub answered yes.

Mr. Ogden noted that Ordinance Section 111D. 3 indicates the items that he must prove to have a variance granted and he went through testimony with each one of the items which is un-rebutted and no one from the public who is objecting to this. He noted that it appears that most fire departments want every house to be numbered and they want every business to be numbered so if there is an emergency call, they can arrive quickly to find it. He noted with many malls, it is a big issue where all the entrances for security are labeled. He noted that they even have a color coated system to find the entrances easy. He suggested that you would want this to assist EMS in knowing exactly where to go and not having any trouble finding it, especially since it is a new use and they are reconfiguring that part of the mall. He noted that the other thing is that there should be some uniformity since all the other end cap users, Irving Shoes, Bon Ton and Sears, all have signage on both sides and in some case more than two signs, it is only reasonable that Buffalo Wild Wings be granted the variance for one additional sign and a half square foot.

Mr. Dowling questioned what the target opening date for the restaurant is. Mr. Ogden answer that it is the middle of December.

Mr. Staub questioned if Buffalo Wild Wings had a liquor license. Mr. Ogden answered that he did not know. Ms. Moran noted that a liquor license transfer was approved by the Board of Supervisors.

Mr. Sirb noted that hearing no further testimony by the applicant, board members, or the audience, the board has 45 days to render a decision relative to this application.

Mr. Staub made a motion to approve Docket #1325. Mr. Dowling seconded the motion. Mr. Turner conducted the following roll-call vote: Mr. Fisher, aye; Mr. Staub, aye; Mr. Dowling, aye; Mrs. Cate, aye; and Mr. Sirb, aye. Mr. Turner noted that the motion carried.

The hearing ended at 8:40 p.m.

Submitted by:

Maureen Heberle

Maureen Heberle
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON
: TOWNSHIP ZONING HEARING BOARD
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA
:
RIPTIDE PROPERTY : DOCKET NO. 1325
MAINTENANCE FOR BUFFALO :
WILD WINGS :

DECISION GRANTING VARIANCE

The applicant seeks a variance from sign regulations. A hearing on the application was held on November 1, 2012.

Facts

1. The applicant is Riptide Property Maintenance of 1180 S. Cameron Street, Harrisburg, Pennsylvania, who submitted the application on behalf of Buffalo Wild Wings at Colonial Park Mall of 4600 Jonestown Road, Harrisburg, Pennsylvania, the lessee of the property in question. The applicant was represented at the hearing by John Ogden, Esquire. Appearing on behalf of the applicant were Matthew Mandel of Fameco Real Estate, a site finder, and Ken Bollinger, sign contractor.

2. The property in question consists of a 6,500 square feet corner store front within the Colonial Park Mall. The site has entrances both inside and outside the mall and its two building fronts face the two streets adjoining the mall, Colonial Road and U.S. Route 22 (Jonestown Road).

3. The applicant is in the process of developing the property as a restaurant. In connection with the project, it proposes to erect a 64.5 square feet sign on the south side of the property facing Jonestown Road, above the entrance to the facility. This sign would contain the store name and logo. Along the west façade facing Colonial Road the applicant proposes to erect a 56.16 square feet sign with the restaurant name in block

letters. This sign would allow patrons entering the mall from Colonial Road to identify the property.

4. Notice of the hearing was posted and advertisement made as required by the ordinance.

5. No one other than the applicant appeared to testify either of favor of or against the proposed variance.

Conclusions

1. Section 714.A of the ordinance limits all signs in a multi-tenant building to one per tenant with a maximum area of 60 square feet. The proposed sign package would violate these provisions of the ordinance.

2. Article 111.D.3 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that the parcel is burdened by a hardship consisting of its corner location in a remote corner of the mall. This hardship makes identification of the site from multiple directions crucial to not only the success of the business but to the safety of the patrons trying to identify the site.

4. Granting the variance will not alter the essential character of the neighborhood nor impair surrounding property values. The size of the sign is modest

given the setbacks from the public street. Further, multiple wall signs are common in the property for leaseholds with multiple building fronts.

Decision

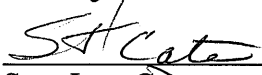
In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variance requested should be and is hereby granted allowing the erection of two wall signs with sign areas of 64.5 square feet and 56.16 square feet. In all other respects the signs shall be installed in strict accord with the plans and testimony submitted to the Board.

Date: 11/29/12

LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD



Gregory P. Sirb



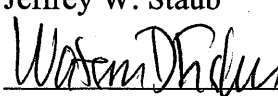
Sara Jane Cate



David B. Dowling



Jeffrey W. Staub



Watson Fisher